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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,410	09/19/2006	Per Holm	20481/0206919-US0	4705

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EXAMINER	
PAGONAKIS, ANNA	
ART UNIT	PAPER NUMBER
1628	

MAIL DATE	DELIVERY MODE
10/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/582,410	HOLM ET AL.	
	Examiner	Art Unit	
	ANNA PAGONAKIS	1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-49* is/are pending in the application.

4a) Of the above claim(s) *11,12,19-23,32-35,47 and 49* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9,10,13-18,24-31,26-46 and 48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicant's amendment filed 7/6/2009 has been received and entered into the present application.

Claims 1-7, 9-49 are pending. Accordingly, claims 1-3, 29-30 and 48 has been amended, claim 8 has been cancelled and claims 11-12, 19-23, 32-35 and 47 remain withdrawn. Newly added claim 49 is withdrawn for being drawn to non-elected invention.

Applicant's arguments, filed 7/6/2009 have been fully considered. Rejections not reiterated from previous Office Actions are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

The declaration of Torben Elhauge under 37 C.F.R. 1.132 has not been considered. It seems this declaration is directed to Application No. 10/513,807 and not the instant application. Further, Applicant has not discussed the declaration in the instant response.

Claims 1-7, 9-10, 13-18, 24-31, 36-46 and 48 are currently under examination and the subject of this Office Action.

Objection

Claim 9 is objected to because of the following informalities: it is dependent on claim 9 which is cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 9-10, 13-18, 24-31, 36-46 and 48 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Guivarc'h et al (U.S. 6,534,088) in view of Cink et al (U.S. 2005/0148594), as evidenced by MeSH Descriptor Data, 2007 .

Guivarc'h et al teach of an orally administered pharmaceutical composition for the treatment of elevated levels of cholesterol and related conditions comprising a statin and fenofibrate in the form of microparticles of a solid fenofibrate that are stabilized by phospholipid as a surface active substance (abstract). Formulations prepared can be dried into powders, optionally blended with excipients or bulking agents, and then can be filled into capsules or converted into granules or tablets with the addition of binders and other excipients known in the art of table making (column 45). The dosage form can be a tablet preferably a coated tablet with moisture resistant or moisture retardant layer, additionally with an enteric coating (column 46). The amount of fenofibrate per capsule or tablet can range from about 20 mg to about 300 mg, and preferably from about 40 mg to about 300 mg and is most preferably 40 mg to 50 mg, 51 mg, 52 mg, 53 mg, 54 mg, 67 mg, 100 mg, 102 mg, 103 mg, 104 mg, 134 mg, 150 mg, 153 mg, 156 mg, 159 mg, 160 mg, 200 mg, 213 mg, 250 mg and 300 mg of fenofibrate per capsule or tablet (column 46). Preferred statins include atorvastatin in a range between 2 mg to 100 mg (column 39). Micronized fenofibrate and fenofibrate compositions were prepared in the presence of starch (Figure 1). Among the excipients included were lactose and mannitol (claim 41). Microcrystalline cellulose can be

used as an excipient in tablet formation of atorvastatin (column 3). Further, the statin and fenofibrate microparticles stabilized by a phospholipid in an aqueous suspension of a sugar such as sucrose can be sprayed onto the surface of a sugar bead or particle such as a sucrose bead or a lactose bead in multiple layers (column 36).

Cink et al teach of fenofibrate and tromethamine where the fenofibric acid content may comprise other active substances such as atorvastatin (paragraph [0039]). MeSH teaches that 2-amino-2-(hydroxymethyl)-1,3-propanediol is also named tromethamine. Clink et al teach that these salt forms can be used to treat hyperlipidemia or coronary heart diseases (paragraph [0004]). An object Cink et al to provide pharmaceutical formulations that make fenofibric acid sufficiently bioavailable and prevent recrystallization of the active substance, i.e. atorvastatin (paragraph [0010]). Enteric binders include polyethylene glycol 6000 (paragraph [0054]).

In view of the teachings of the cited prior art, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made of Guivarc'h et al in combination with the formulation of Cink et al. Such motivation arises from the fact that both references teach improved oral formulations of fenofibrate and atorvastatin. Guivarc'h teaches this improved formulation with additional excipients including lactose, mannitol and microcrystalline cellulose and enteric coatings. Cink et al teach tromethamine and polyethylene glycol 600 in the formulation which provides increased bioavailability. Therefore, it would have been obvious to one of ordinary skill in the art to administer the excipients and coatings of the formulations of Guivarc'h et al with those of Cink et al in order to achieve the present formulation with a reasonable expectation that the combination would render an improved oral and bioavailable composition.

Claims 17-18 and 37 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Guivarc'h et al (U.S. 6534,088) in view of Cink et al (U.S. 2005/0148594), as evidenced by MeSH

Descriptor Data, 2007, as applied to claims 1-10, 13-16, 24-31, 36, 38-46 above, and further in view of Ohsawa et al (U.S. 2004/0023919).

The combination of Guivarc'h et al (U.S. 6534,088) in view of Cink et al (U.S. 2005/0148594), as evidenced by MeSH Descriptor Data, 2007 is set forth *supra*. The combination differs by not comprising the administration of an antioxidant.

Ohsawa et al teaches that HMG-COA reductase inhibitor, such as atorvastatin, with ascorbic acid derivatives reduces total cholesterol levels (paragraph [0005] and claim 2).

One of ordinary skill in the art would have found it prima facie obvious to administering atorvastatin with ascorbic acid and the claimed formulations of Guivarc'h et al and Cink et al, since as disclosed ascorbic acid leads to reduction in cholesterol. Such a person would have been motivated to do so in order to improve the efficacy of treatment of atorvastatin and thus, the suggestion to make such a combination flows logically from the very fact that each was known in the prior art to have the same therapeutic utility and, in turn, raises the reasonable expectation of success that the two therapies when combined have, at minimum, additive effects.

With respect to claims 17-18, the determination of the optimum pH of the claimed solid dosage form would also have been a matter well within the purview of the skilled artisan. Such a determination would also have been made in accordance with a variety of factors, such as modifying the pharmaceutical carriers used to formulate the dosage form to optimize palatability of the dosage form and to maximize tolerability of the composition. In addition, the skilled artisan would also have been motivated to optimize the pH of the solution in order to maintain the active pharmaceutical ingredients in their desired salt form without any degradation of the active ingredients that may occur due to a change in pH.

Response to Applicant's Remarks

Applicant alleges that neither Cink nor Guivarc'h teach a tablet with each layer comprising a separate active ingredient. This is not found persuasive. Applicant is guided above to teachings of multi-layer compositions. *Applicant alleges that Cink does not teach tromethamine as a stabilizer for statin in a composition comprising fenofibrate and statin in separate layers.* This is not found persuasive. Applicant is reminded that rejections made under 35 U.S.C. 103(a) are based upon the combination of references. As a result, focusing solely on the discrete teachings of each of the cited references is tantamount to examining each of them inside of a vacuum and fails to be persuasive in establishing non-obviousness because it is the combined teachings that are the basis for a proper conclusion of obviousness, not each individual reference alone. In other words, it must be remembered that the references are relied upon in combination and are not meant to be considered separately. To properly conclude obviousness of an invention does not require the claimed invention to be expressly suggested in its entirety by any one single reference under 35 U.S.C. 103(a). Rather, the test is what the combined teachings of the reference would have suggested to those of ordinary skill in the art.

Conclusion

No claim is found to be allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANNA PAGONAKIS whose telephone number is (571)270-3505. The examiner can normally be reached on Monday thru Thursday, 9am to 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AP

/Brandon J Fetterolf/
Primary Examiner, Art Unit 1642